

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

Deborah Lambert,)	
)	
Plaintiff,)	9:07-cv-119-CWH
)	
vs.)	
)	
Blue Cross and Blue Shield of South Carolina,)	ORDER
)	
Defendant.)	
)	

On December 5, 2006, the plaintiff filed this action in the South Carolina Court of Common Pleas for Jasper County, claiming that the defendant breached its duties imposed by ERISA when it wrongfully cancelled the plaintiff's insurance policy. On January 15, 2007, the defendant removed this action to this Court. On July 11, 2007, the defendant filed a motion for summary judgment claiming that: (1) the action is barred by the statute of limitations; (2) the defendant is not the plan administrator; (3) the plaintiff has failed to exhaust administrative remedies under the plant; and (4) the plaintiff's fiduciary duty claim is statutorily barred. On July 23, 2007, the plaintiff moved to dismiss this action without prejudice pursuant to Rule 41(a)(2) claiming that the defendant has revealed certain facts to the plaintiff and that the plaintiff has lost interest in this action. On August 6, 2007, the defendant filed a response to the plaintiff's motion. The defendant claims that based on its motion for summary judgment any voluntary dismissal should be with prejudice.

A plaintiff's motion to voluntarily dismiss an action pursuant to Rule 41(a)(2) should not be denied absent substantial prejudice to the defendant. Andes v. Versant Corp., 788 F.42d 1033, 1036 (4th Cir. 1986). The defendant has not shown that granting the plaintiff's motion

will substantially prejudice the defendant; nor does it appear that granting the plaintiff's motion will prejudice the defendant. Accordingly, the plaintiff's motion is granted, and this action is dismissed without prejudice.

AND IT IS SO ORDERED.



C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

August 7, 2007
Charleston, South Carolina